

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LANCE MUSSELMAN, *et al.*,

Plaintiffs,

v.

MARK NITCHMAN, *et al.*,

Defendants.

CASE NO. C04-0984RSM

ORDER DENYING PLAINTIFFS'
THIRD MOTION TO COMPEL
AND ORDERING MONETARY
SANCTIONS AGAINST
PLAINTIFFS

This matter comes before the Court on plaintiffs' third Motion to Compel Discovery. (Dkt. #54). Plaintiffs ask this Court for an order compelling: (1) a more complete response by defendant Nitchman to plaintiff Musselman's second set of interrogatories and requests for production; (2) a more complete response by defendant Nitchman to plaintiff Newmon's first set of interrogatories and requests for production; (3) a more complete response by defendant Thorne to plaintiff Musselman's first set of interrogatories and requests for production (4) a response by defendant Broxon to plaintiff Newmon's second set of interrogatories, and (5) a response by defendant Allen to plaintiff Newmon's first set of interrogatories. (Dkt. #45). Defendants ask that this Court deny the motion, and impose sanctions on plaintiffs for bringing such a frivolous motion.

1 Having reviewed plaintiffs' motion (Dkt. #54), defendants' response (Dkt. #58),
2 plaintiffs' reply (Dkt. #60), and the remainder of the record, the Court does hereby find and
3 ORDER:

4 (1) Plaintiffs' Third Motion to Compel Discovery (Dkt. #54) is DENIED as follows:

5 a. Interrogatories and Requests for Production Relating to Defendant Nitchman:

6 Plaintiffs allege that defendant Nitchman has "not provided a responsive answer" to
7 Interrogatory No. 2 and Request for Production No. 2 contained in Nitchman's Second
8 Interrogatories to Defendant Nitchman, which asks him to state whether he has ever taken any
9 actions related to any special project worked on by Ben Broxon or Carl Allen. (Dkt. #54 at 4).
10 Curiously, Nitchman's two-page answer to that interrogatory and request for production are
11 attached as an exhibit to plaintiffs' own motion. Thus, it is a blatant misstatement for plaintiffs
12 to assert that Nitchman has "not provided a responsive answer." A review of Nitchman's
13 response also reveals that plaintiffs' objection has no merit. Nitchman explains several specific
14 special projects in which Broxon and Allen were involved. (Dkt. #55, Ex. F). However, he also
15 responded that he does not possess the documents connected to those special projects, or no
16 longer has access to such documents. (Dkt. #55, Ex. F). While plaintiffs may not like that
17 response, or may believe that Nitchman still has access to the documents by virtue of his current
18 management position, it is neither truthful nor appropriate to represent to this Court that
19 Nitchman has "not provided a responsive answer" the interrogatory. Accordingly, the Court
20 will not compel any further response to Interrogatory No. 2 and its corresponding Request for
21 Production by Nitchman.

22 Plaintiffs also complain that they "have not received responsive answers" from Nitchman
23 to Interrogatory No. 1 and Request for Production No. 1 of plaintiff Musselman's Third
24 Interrogatories and Requests for Production to Defendant Nitchman, which asks him to identify
25 "all sworn statements and declaratory statements made under penalty of perjury related to the
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1 case of *Teresa Moore v. Washington State Ferries & Mark Nitchman*.”¹ (Dkt. #54 at 5-6).
2 Defendants argue that plaintiffs’ objection is improper because Nitchman produced the only
3 document in his possession, which was a transcript of his September 19, 2000, deposition
4 testimony. The court agrees. A review of Nitchman’s responses reveals that Nitchman indeed
5 responded to the Interrogatory, explaining that he had one document in his possession, and he
6 produced that document. He also raised an objection to the interrogatory based on attorney-
7 client privilege, and objected that the information sought was not otherwise relevant to the
8 instant law suit. (Dkt. #58, Ex. B at 12-13). Thus, Nitchman clearly “responded” to the
9 interrogatory. Accordingly, the Court again finds that plaintiffs are not entitled to an Order
10 compelling any further responses from defendant Nitchman at this time.

11 b. Interrogatories and Requests for Production Relating to Defendant Thorne: Plaintiffs
12 also complain that defendant Thorne has “refused to answer [Interrogatory No. 4] and refused
13 to provide documents under Request for Production,” which asks him to identify “all
14 communications related to [his] return of any compensation to any employer of yours from 1990
15 to the present.” (Dkt. #54 at 6-7). A review of defendant Thorne’s responses reveals that
16 plaintiffs’ objection is unfounded. Thorne responded to the Interrogatory, explaining that “the
17 interrogatory is unintelligible and irrelevant and not calculated to lead to the discovery of
18 evidence that would be admissible at trial.” (Dkt. #58, Ex. C at 16-17). Thorne also responded
19 that he has only been the CEO of the Washington State Ferries since January 7, 2002. While
20 plaintiffs argue that Thorne’s response is insufficient because they discovered a newspaper
21 article from Oregon pertaining to an investigation of a pay raise Thorne received while CEO of
22 the Port of Portland, plaintiffs have not convinced this Court that, without any other
23 corresponding evidence, the article has any basis in fact or is otherwise relevant to the instant
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25 ¹ Defendants note that the interrogatory to which plaintiffs object was contained in plaintiff
26 Newmon’s First Set of Interrogatories, not plaintiff Musselman’s Third Set.

1 litigation. Consequently, the Court agrees that the interrogatory is improper because it assumes
2 a fact that has not been established. Accordingly, the Court finds that plaintiffs are not entitled
3 to an Order compelling any further responses from defendant Thorne at this time.

4 c. Interrogatories and Requests for Production Relating to Defendants Broxon and
5 Allen: Plaintiffs next complain that defendant Broxon and defendant Allen have “simply refused
6 to provide responsive answers” to several interrogatories contained in plaintiffs’ Second Set of
7 Interrogatories and in plaintiff Newmon’s First Set of Interrogatories. (Dkt. #54 at 7-11). The
8 Court finds these objections moot, as plaintiffs have actually received the responses. (Dkt. #58
9 at 4-5). The Court also finds that plaintiffs did not make a good faith effort to conduct a
10 discovery conference before filing this portion of the motion to compel. (See Dkt. #58 at 4-5).
11 Accordingly, the Court finds that plaintiffs are not entitled to an Order compelling any further
12 responses from defendant Thorne or defendant Allen at this time.

13 d. Request for Sanctions Against Plaintiff: Finally, the Court turns to defendants’
14 request for sanctions against plaintiffs for raising frivolous and unfounded objections in this
15 motion to compel. (Dkt. #58 at 6). As the Court warned plaintiffs in its Order on plaintiff’s
16 Second Motion to Compel, the Court does not appreciate wasting its valuable time and
17 resources on objections that are unfounded, or misstate the actual responses provided by
18 defendants. (See Dkt. #57). The Court further warned that continuing to present such
19 unfounded objections to the Court would result in sanctions.

20 Once again, the majority of plaintiffs’ objections in this Third Motion to Compel are
21 completely without basis. Furthermore, plaintiffs continue to assert that the various defendants
22 have “refused” to answer interrogatories or requests for production, when in fact they have
23 responded, but plaintiffs are simply not happy with the response. Apparently, plaintiffs failed to
24 consider the Court’s previous warning before advancing their arguments in this manner.
25 Accordingly, the Court finds sanction appropriate, and plaintiffs’ counsel is hereby Ordered to
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1 pay a fine of \$500.00 to the Clerk of this Court no later than 30 days from the date of this
2 Order.

3 (2) The Clerk shall forward a copy of this Order to all counsel of record.
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5 DATED this _25_ day of April 2005.
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8 RICARDO S. MARTÍNEZ
9 UNITED STATES DISTRICT JUDGE
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